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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

10 MAY 1993

Honorable Charles E. Grassley  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510-1501

IN REPLY REFER TO:  
1800D4  
8010-JRC  
CN9301758

Dear Senator Grassley:

Thank you for your letter on behalf of Mr. Markus Bryant, regarding implementation of the programming access provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act).

Section 19 of the 1992 Cable Act adds new Section 628 to the Communications Act of 1934, as amended, to prohibit unfair or discriminatory practices in the sale of video programming. The expressed intent of this provision is to foster the development of competition to cable systems by increasing other multichannel video programming distributors' access to programming. In our First Report and Order in MM Docket No. 92-265, adopted April 1, 1993, and released April 30, 1993, the Commission adopted implementing regulations for Section 19. In so doing, the Commission endeavored to follow the plain language of the statute, as informed by the legislative history, and to effectuate its reading of Congressional intent based on its own judgement and expertise, in light of all comments received.

In particular, the Commission concludes in the First Report and Order that price discrimination will be deemed to occur if the difference in the prices charged to competing distributors is not explained by the factors set forth in the statute, which generally involve (1) cost differences at the wholesale level in providing a program service to different distributors; (2) volume differences; (3) differences in creditworthiness, financial stability and character; and (4) differences in the way the programming service is offered. The Commission concluded that these factors will permit sufficient latitude for legitimate and justifiable pricing practices common to a dynamic and competitive marketplace. While any differential in the price paid by one distributor as compared with that paid by its competitor may form the basis for a complaint, we will impose a higher burden on programmers where the price difference at issue exceeds either five percent or five cents per subscriber, whichever is greater.

The First Report and Order also concludes that complainants alleging violations of specific prohibitions of Section 628 regarding discrimination, exclusive contracts or undue influence will not be required to make a threshold showing of harm. The First Report and Order states the Commission's belief that Congress has already determined that such violations

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result in harm. The Commission also concludes, however, that the plain language of the statute requires complaints filed pursuant to the general prohibitions of Section 628(b) regarding unspecified unfair practices must demonstrate that an alleged violation had the purpose or effect of hindering significantly or preventing the complainant from providing programming to subscribers or consumers.

In addition, the First Report and Order adopts a streamlined complaint process. The Commission's rules will encourage programmers to provide

United States Senate

WASHINGTON, D.C. 20510

April 12, 1993

Linda Townsend-Solheim  
Director, Legislative Affairs  
Federal Communications Commission  
1919 M Street, N.W., Room 857  
Washington, D.C. 20554

Dear Linda:

Enclosed please find a letter from Markus Bryant regarding the FCC's ruling on price and access discrimination.

I would appreciate any assistance you could provide pertaining to this matter. Please mark your return correspondence to the attention of Dawn Latham when responding to my office.

Thank you for your attention to my request.

Sincerely,

*Chuck*

Charles E. Grassley

MMB  
~~11/11~~  
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**Iowa Lakes Electric**

